

REMARKS

Claims 1-36 are pending, in which claims 1, 18, 35 and 36 are independent. Claims 3 and 20 have been amended. No new matter has been introduced by way of these amendments. Favorable reconsideration and reexamination of the action mailed on November 27, 2007 is respectfully requested in view of the forgoing amendments and the following comments of the Applicant, which are preceded by related comments of the Examiner in small bold type:

Claim Objections

Claims 3 and 20 are objected to because of the following informalities: use of the term "processes" instead of "possesses". Appropriate correction is required.

Claims 3 and 20 have been amended as suggested by the Examiner.

Claim Rejections - 35 USC § 101

Claims 1 and 18 are rejected under 35 U.S.C. 101 because the disclosed invention is inoperative and therefore lacks utility. The claims as written are missing key steps. Without these steps the meaning and definition of the limitation is lost and remains unclear. These claims state "determining if a user has access to a data source" however Examiner is unclear who or what makes this determination and what the data source is. These claims further disclose "identifying one or more upgrade packages that would allow the user to access the data source". These claims as written fail to proclaim what happens when the package is identified. Therefore, the claims as described with missing steps make it difficult to operate the invention.

The patent specification as a whole discloses and enables a person of ordinary skill in the art to practice the invention claimed in claims 1 and 18. (*See e.g.*, Specification, p. 3-9; Fig. 1-6.) The enabled invention is operative and provides a number of advantages that make it useful. (*See e.g.*, Specification, p. 2.) Thus, Applicant asserts claims 1 and 18 do not lack the requisite utility.

Claim Rejections - 35 USC § 112

Claims 1 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims as written are missing key steps. Without these steps the meaning and definition of the limitation is lost and remains unclear. These claims state "determining if a user has access to a data source" however Examiner is unclear who or what makes this determination and what the data source is. These claims further disclose "identifying one or more upgrade packages that would allow the user to access the data source". These claims as written fail to particularly point out or distinctly claim what happens when the package is identified.

Independent claims 1 and 18 do particularly point out and distinctly claim the subject matter that the Applicant regards as the invention. Since claim 1 is a method claim, steps are provided for carrying out the claimed method. In independent claim 18, the processor executing the claimed computer program product, executes the step of determining if a user has access to a data source.

The term "data source" from claims 1 and 18 is illustrated by way of a lengthy list of examples in the specification (e.g., specification, p. 3.) and use of the term is understood to be clear to a person of ordinary skill in the art.

The meaning of the term "identifying one or more upgrade packages that would allow the user to access the data source" is described in the specification in regards to operations of a package identification process. Referring to pages 5 and 6 of the specification, along with figures 5 and 6, exemplary implementations of this term are described. Applicant considers the elements of claims 1 and 18 to respectively define a patentable invention, independent of operations after the upgrading package or packages have been identified.

Claim Rejections - 35 USC § 103

Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilliam et al. (US 7,206,765 B2) (hereinafter "Gilliam") in view of Marsh et al. (US 6,574,465 B2) (hereinafter "Marsh").

Gilliam is not understood disclose or suggest identifying one or more upgrade packages that would allow a user to access a data source, in response to the user being denied access to the data source, as required by independent claim 1. Gilliam describes a method and system for "enforcing rights expressions specifying manners of use of an item." (Gilliam, col. 3, lines 7-8, 20-21.) The reference deals with comparing rights expressions to determine whether access will be granted or denied. (Gilliam, col. 41, line 52 – col. 42, line 3.) As can be clearly seen in Fig. 9, the enforcement process of Gilliam ends when access is either granted or denied. (Gilliam, Fig. 9; col. 41, line 52 – col. 42, line 3.) Gilliam has nothing to do with what happens after access is denied. In particular, it does not deal with assisting a user to acquire access rights, in response to access being denied.

Marsh is not understood to remedy the forgoing deficiencies of Gilliam. Specifically, Marsh does not teach identifying one or more upgrade packages that would allow a user to access a data source, *in response to the user being denied access* to the data source.

Rather, Marsh describes “a system and method for analyzing wireless communication data for determining an optimal wireless communication service plan.” (Marsh, Abstract.) Marsh analyses “periodically loaded wireless service usage of a given account or subscriber, and/or group of accounts or subscribers ..., and determines whether or not that subscriber, or group of subscribers is on the optimal wireless service plan according to the particular subscriber's usage patterns across a variable number of billing periods.” (Marsh, col. 8, lines 31-38.) In the scenario described by Marsh, the user has access to a wireless communication network and in fact it is historical data of the users usage of that resource that is used to evaluate alternative service plans. Marsh is not understood to deal with the case of a user who is denied access to a data source and certainly does not identify packages in response to the user being denied access to a data source. For the foregoing reasons neither Gilliam nor Marsh, individually or in combination, disclose or suggest this element of independent claim 1 and these claims are allowable.

Dependent claims 2-17 are allowable over Gilliam and Marsh, individually or in combination, at least for the reasons discussed with respect to independent claim 1. Although it is believed that the dependent claims define patentably distinct features, given the distinctiveness of the respective independent claims, the dependent claims are not discussed here in detail.

Independent claims 18, 35 and 36 include subject matter similar to claim 1. As such, claims 18, 35 and 36 are allowable over Gilliam and Marsh for at least the reasons discussed above. Similarly, claims 17-34, which depend upon independent claim 18 are also considered to allowable over the cited references.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this

paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

In view of the foregoing amendments and remarks, the entire application is now believed to be in condition for allowance, and such action is respectfully requested at the Examiner's earliest convenience.

Applicant's attorney can be reached at the address shown below. Telephone calls regarding this application should be directed to 617-368-2191.

Please apply any other charges or credits to deposit account 06-1050 making reference to attorney docket number 14618-009001.

Respectfully submitted,

Date:

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